REMARKS

Claims 1-2, 5-6, 8-10, and 13-16 are pending in the present application. By this response, claims 1, 5, and 9 are amended. Claims 1, 5, and 9 are amended to recite subject matter similar to "identifying a previously recorded proxy bid from a second bidder which is greater than said current high bid and less than said current high bid plus said minimum increment." Support for this amendment may be found at least in claim 13, which presently recites similar subject matter. Reconsideration of the claims in view of the above amendments and the following remarks is respectfully requested.

I.   35 U.S.C. § 103, Alleged Obviousness, Claims 1, 2, 5, 6, 8-10, and 13-16

The Office Action rejects claims 1, 2, 5, 6, 8-10, and 13-16 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Fisher et al. (U.S. Patent No. 6,243,691 B1). The following remarks are provided in rebuttal to the Examiner's statement in the present Office Action beginning on page 6, paragraph 2.

As to claims 1, 5, 9 and 13, the Office Action states:

Referring to claims 1, 5, 9, and 13, Fisher teaches a method and system for generating proxy bids in an electronic auction comprising:
- specifying a minimum increment for bidding on an item (Figure 2; column 5, lines 63-65);
- receiving a bid for said item from a first bidder which is a current a high bid for said item (Figure 2);
- identifying a previously recorded proxy bid from a bidder (column 8, line 56 – column 9, line 6);
- generating by said electronic auction an bid which becomes a new high bid for said utilizing said proxy bid, wherein said another bidder holds the new high bid for said item, further wherein said bid equals said bid received from said first bidder by said minimum increment, and wherein said bid equals said proxy bid (column 8, line 56 – column 9, line 6; column 12, lines 33-61).

Fisher does not teach that the proxy bid from a second bidder is greater than the current high bid. However, Fisher teaches that a plurality of bidders are allowed to establish the limit amount of their proxy bids when the bids are initially placed (column 8, lines 56-60). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to allow a bidder to set the limit of the proxy bid to whatever amount the bidder desired (e.g. greater than the current high

bid). One of ordinary skill in the art would have been motivated to do so in order to allow the bidder to place a bid that he or she felt was competitive. Fisher does not explicitly teach that the proxy bid from a second bidder is not greater than said current high bid plus said minimum increment. However, Fisher teaches that the proxy bid is equal to the current high bid plus minimum increment (column 8, line 64 – column 9, line 3). The Examiner notes that this reads on the Applicants' claim language because the claim does not preclude the proxy bid from being equal to the current high bid plus the minimum increment. The claim language states only that the proxy bid from a second bidder is "not greater than" said current high bid plus said minimum increment. A proxy bid which is equal to the to the current high bid plus the minimum increment meets this limitation because it is "not greater than" the current high bid plus said minimum increment. Fisher does not teach that the bid is an off-increment bid or that the bid "does not exceed" the first bid plus minimum increment or proxy bid. However, as already noted above, Fisher teachings read on these limitations because the claim language does not preclude the new bid from being equal to the first bid plus increment or proxy bid. A bid which is equal to the to the first bid plus the minimum increment or proxy bid meets this limitation because it "does not exceed" the first bid by said minimum increment or proxy bid.

Office Action dated January 3, 2005, pages 2-4.

Claim 1, which is representative of the other rejected independent claims 5, 9, and 13 with respect to similarly recited subject matter, reads as follows:

1.   A method in an electronic auction for generating off-increment proxy bids, said method comprising the computer implemented steps of:
          specifying a minimum increment for bidding on an item;
          receiving a bid for said item from a first bidder which is a current high bid for said item;
          identifying a previously recorded proxy bid from a second bidder which is greater than said current high bid and less than said current high bid plus said minimum increment; and
          generating by said electronic auction an off-increment bid which becomes a new high bid for said item utilizing said proxy bid, wherein said second bidder holds the new high bid for said item, further wherein said off-increment bid does not exceed said bid received from said first bidder by said minimum increment, and wherein said off-increment bid does not exceed said proxy bid.

Fisher fails to teach or suggest identifying a previously recorded proxy bid from a second bidder, which is greater than said current high bid and less than said current high bid plus said minimum increment and generating by said electronic auction an off-increment bid

which becomes a new high bid for said item utilizing said proxy bid, wherein said second bidder holds the new high bid for said item, further wherein said off-increment bid does not exceed said bid received from said first bidder by said minimum increment, and wherein said off-increment bid does not exceed said proxy bid.

Fisher is directed to conducting a multi-person, interactive auction, in a variety of formats, without using a human auctioneer to conduct the auction. The system allows a group of bidders to interactively place bids over a computer or communications network. Those bids are recorded by the system and the bidders are updated with the current auction status information. When appropriate, the system closes the auction from further bidding and notifies the winning bidders and losers as to the auction outcome.

The Office action acknowledges that "Fisher does not teach that the proxy bid from a second bidder is greater than the current high bid" and "Fisher does not explicitly teach that the proxy bid from a second bidder is not greater than said current high bid plus said minimum increment." The present rejection relies only on the fact that a proxy bid may be equal to the current high bid plus minimum increment in order to read on the previously claimed proxy bid from a second bidder is not greater than said current high bid plus said minimum increment. Applicants amend the claims 1, 5, and 9 to more clearly recite the subject matter. Thus, the presently invention identifies a previously recorded proxy bid from a second bidder which is greater than said current high bid and less than said current high bid plus said minimum increment. Claim 13 already contained this limitation; however, it was not addressed in this Office Action, but merely lumped in with the rejection of claims 1, 5, and 9. Therefore, the Fisher reference no longer reads on the presently claimed invention as the Fisher reference would only be applicable, as acknowledged by the Office Action, if a proxy bid were equal to the to the current high bid plus the minimum increment.

In the April 6, 2004 response, Applicants argued that, as noted by the Examiner, Fisher does not teach generating an off-increment bid which becomes a high bid for the item utilizing said proxy bid, wherein a second bidder holds a current high bid for the item, and wherein the off-increment bid does not exceed the bid from the first bidder by the increment and wherein the off-increment bid does not exceed the proxy bid. The present Office Action states:

Fisher does not teach that the bid is an off-increment bid or that the bid "does not exceed" the first bid plus minimum increment or proxy bid. However, as already noted above, Fisher teachings read on these limitations because the claim language does not preclude the new bid from being equal to the first bid plus increment or proxy bid. A bid which is equal to the to the first bid plus the minimum increment or proxy bid meets this limitation because it "does not exceed" the first bid by said minimum increment or proxy bid.

As discussed above, claims 1, 5 and 9 have been amended to recite subject matter similar to "identifying a previously recorded proxy bid from a second bidder which is greater than said current high bid and less than said current high bid plus said minimum increment." Again, claim 13 already contained this limitation; however, it was not addressed in this Office Action. Therefore, the Fisher reference no longer reads on the presently claimed invention as the Fisher reference would only be applicable, as acknowledges by the Office Action, if a proxy bid were equal to the to the current high bid plus the minimum increment.

Furthermore, the description by Fisher to adjust a bid upward "using a percentage of the bid as opposed to a minimum increment" is insufficient to obviate the step of generating an off-increment bid by utilizing a proxy bid and is wholly insufficient to ensure that the off-increment bid is increased from the received bid by an amount not equal to the minimum increment. Absent some teaching, suggestion, or incentive to modify Fisher in this manner, the presently claimed invention can be reached only through an improper use of hindsight using the Applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

Furthermore, Fisher does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. Fisher actually teaches away from the presently claimed invention. For example, as noted by the Examiner, Fisher teaches a method to guarantee a proxy bidder the lowest possible price (column 12, lines 58-61) as opposed to a technique that enables off-increment proxy bids such that the deficiencies of prior art systems resulting in a seller being disadvantaged by selling an item for a lower price than that offered by a proxy bid when the proxy bid exceeds a high bid by an amount less than a minimum auction increment as in the presently claimed invention. Absent the Examiner pointing out some teaching or incentive to implement

off increment proxy bids by Fisher, one of ordinary skill in the art would not be led to modify Fisher to reach the present invention when the reference is examined as a whole.
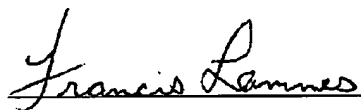
In view of the above, Applicants respectfully submit that Fisher fails to teach or suggest all of the features of independent claims 1, 5, 9, and 13. At least by virtue of their dependency on claims 1, 5, 9, and 13, the specific features of claims 2, 6, 8, 10, and 14-16 are not taught or suggested by Fisher. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1, 2, 5, 6, 9-10, and 13-16 under 35 U.S.C. § 103.

II.   Conclusion

It is respectfully urged that the subject application is patentable over the prior art of record and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

DATE: April 4, 2005

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